IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 21ST JUNE 2007 / 31ST JYAISHTA 1929

CRP.No. 1016 of 2006(F)

AGAINST THE ORDER IN EP.610/2002 IN
OS.615/1998 of PRINCIPAL SUB COURT,ERNAKULAM

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REVN. PETITIONER: PETITIONER/JUDGEMENT DEBTOR

ROSAMMA JOSE, AGED 64 YEARS,
'SWAPNA', M.L.A.ROAD, PALACHUVADU,
KAKKANAD, KOCHI-30, NOW RESIDING AT MALIAKKAL
HOUSE, NEAR H.M.T.KALAMASSERY, THRIKKAKARA
NORTH VILLAGE.

BY ADV. SRI.P.K.SAJEEV

RESPONDENTS: DECREE HOLDERS AND GARNISHEE

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1. M.K.JAYASREE,
W/O.LATE P.S.GOPINATH,
RESIDING AT 14/1476, CHAKKANATTU TEMPLE JUNCTION,
CHULLIKKAL, KOCHI-5.

2. P.G.DIVYA, D/O.LATE P.S.GOPINATH,
RESIDING AT 14/1476, CHAKKANATTU TEMPLE JUNCTION,
CHULLIKKAL, KOCHI-5.

BY ADV. SRI.T.K.RADHAKRISHNAN

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 21/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON I.A.3610/06 IN C.R.P. 1016/06

DISMISSED

21.6.2007 SD/- M.N.KRISHNAN, JUDGE

jj /TRUE COPY/

P.A.TO JUDGE

M.N.KRISHNAN, J.

C.R.P.No.1016 OF 2006

Dated this the 21st June, 2007.

O R D E R

This civil revision petition is preferred by the judgment debtor in O.S.615/98 of the Subordinate Judge's court, Ernakulam. The short point that has come up for consideration before the court is regarding the attachability of the commuted pension belonging to the judgment debtor. Learned counsel for the revision petitioner contends that there is a strict bar under Section 60(1)(k) of the CPC for attaching the same. The position is well settled now that when the pension is in the hands of the employer it is not attachable but when it reaches the hands of the person it becomes attachable and therefore benefit under Section 60(1)(k) cannot be claimed. This is well settled and a decision of the Madras High Court reported in **Sathiyabama v. Palanisamy** {2004(3) KLT S.N. 53 Case No: 72} shows "amounts due as provident fund, leave salary, gratuity etc. due to the deceased employee cannot be attached in hands of employer pending suit for recovery of money filed against legal representatives of such employee for amounts borrowed by him". The learned Judge also stated " In one of the decisions, even the pay order has been made out but it had not left the hands of

the employer, the plea of the person seeking attachment on the ground that, really nothing further was required, was in vain. It still had not reached the employer and as the learned Judge picturesquely put it "a miss is as good as a mile". So, the question of law is crystal clear and what has to be decided is whether the amount has reached the hands of the beneficiary. A file is produced and it is submitted that by a letter dated 16.11.1998 which is marked as Ext.B1(a) the amount is credited to the account of the judgment debtor bearing account No:7494. On the other hand learned counsel for the revision petitioner has produced before me a paper to the effect that her savings bank account No:7494 stood closed on 7th November, 1998. So, where exactly the amount has gone and what has happened etc. are matters which are to be proved. There is a burden heavily on the judgment debtor as well since she is claiming an exemption under Section 60 to establish that the amount has in fact not reached her hands. Therefore, I feel an opportunity can be given to the judgment debtor and the decree holder also can adduce evidence in support of its contention that it has reached the hands of the judgment debtor. I feel that some evidence may be necessary to connect the documents in Ext.B1 file relating to the subject and it can be done by the parties.

Therefore, the order under challenge is set aside and the matter is remitted back to the executing court for fresh consideration in the light of the observations made above. It is made clear that both the parties shall be granted sufficient opportunity to produce and adduce evidence in support of their respective contentions. C.R.P is disposed of accordingly. Parties are directed to appear before the executing court on 26.7.2007.

M.N.KRISHNAN
Judge

jj